



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 18th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO. 6095 OF 1992

BETWEEN :

1. Sri. Ganapathy Achar  
S/o late Manjayya Achar  
aged about 60 years
2. Sri B.J. Acharya  
S/o late Manjayya Achar  
Aged about 55 years

Both residing at Beedige Mane,  
Kedila Village, Bantwal Tq.,  
Mangalore.

.. PETITIONERS

(Sri A. Krishna Bhat, Advocate)

A N D :

1. State of Karnataka  
represented by the Secretary  
to Department of Revenue,  
Government of Karnataka,  
Vidhana Soudha,  
BANGALORE - 1

2. The Deputy Commissioner  
D.K., Mangalore

.. RESPONDENTS

(Sri C. Ramakrishna, H.C.G.P.  
for R -1 & 2)

Writ Petition filed under Articles 226 & 227 of the Constitution of India, praying to; issue a writ of certiorari, quashing Annexure - A, dtd. 2.12.1991, in case No. B.DIS.LND (4) 686/88-89, on the file of the Deputy Commissioner, D.K., Mangalore, the second respondent, etc.

This Writ Petition coming on for Hearing, this day, the Court made the following :

O\_R\_D\_E\_R\_

The properties bearing Sy.Nos. 248/2 and 248/4 of Kadila village are the Verga properties of the petitioner. The property lying adjacent to Sy.No. 243/4 is a Kumki land. It is alleged that the authorities have taken steps to assume 30 cents thereof for forming house sites. By the impugned order it was held that the Kumki right of the petitioner with respect to 30 cents of the land is extinguished, as it needed

needed for public purpose, namely, grant of house-sites to the siteless persons. This order, Annexure - A, is challenged in these proceedings.

2. It is not in dispute that the land in question is the Kumki land of the petitioner. The question as to whether by an executive order, such right has been extinguished, came up for consideration in AIR 1976 SC 853, wherein their Lordships have stated thus :

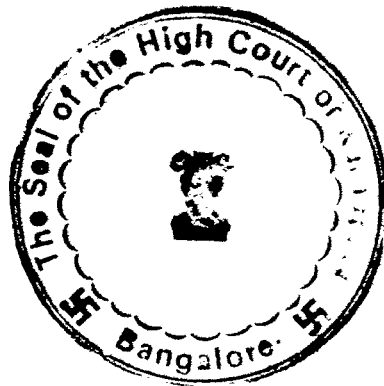
"23. Although styled as 'privileges, kumki rights are recognised by these statutory Rules and the Standing Orders aforesaid. They are property rights notwithstanding the fact that their scope is restricted and their exercise is subject to these statutory Rules. Therefore, these rights could be curtailed, abridged or taken away only by law and not by an executive fiat."

It is also clear from Section 79(2) of the Karnataka Land Revenue Act that the State has also not made any enactment to extinguish the Kumki right that a person enjoys.

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Thus, it is clear that by an executive order, the state cannot extinguish the Kumkit right of the petitioner. Annexure - A has, therefore, to be quashed. I do so. I make it clear that this pronouncement will not stand in the way of the Government initiating other proceedings under other statutes to acquire the land. The writ petition is disposed of as above.



Sd/-  
JUDGE

Pkc/Hrp